WALTER OIL AND GAS CORP.

IBLA 95-11 Decided October 8, 1997

Appeal from a decision of the Associate Director for Policy and Management Improvement, Minerals Management Service, denying a request to close a capital recovery period on November 1, 1988, for net profit share lease 0CS-G 4721.

Affirmed.

1. Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases--Regulations: Interpretation

   Departmental regulation 30 C.F.R. § 220.002 (1990) was properly construed to find that a capital recovery period for an OCS oil and gas net profit share lessee ended on the last day of the month in which the lessee gave notice to MMS to terminate the period.

APPEARANCES: Douglas B. Glass, Esq., Houston, Texas, for Appellant; Peter J. Schaumberg, Esq., Howard W. Chalker, Esq., Geoffrey Heath, Esq., and Sarah L. Inderbitzin, Esq., Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Walter Oil and Gas Corporation (Walter) has appealed from a June 29, 1994, Decision of the Associate Director for Policy and Management Improvement, Minerals Management Service (MMS), denying a request submitted by Walter on February 28, 1991, to close the capital recovery period for Federal net profit share lease OCS-G 4721 effective November 1, 1988. Citing 30 C.F.R. § 220.002, MMS rejected Walter's termination request because it would have been effective 28 months before the request was received by MMS, a result that MMS determined was contrary to the rule provided. It was

determined that, under 30 C.F.R. § 220.002, when a lessee elects to terminate a capital recovery period, that action takes place on the last day of the month in which notice of the election to terminate is received by MMS. Walter filed a timely appeal.

The account at issue is for a Federal net profit share lease issued under 43 U.S.C. § 1337 (1994); regulations establishing accounting procedures for the lease are published at 30 C.F.R. Part 220 (1990). This type of lease, as the name implies, permits the United States to share in profits from the lease. See 30 C.F.R. § 220.001. The regulations permit participating lessees to claim an allowance for capital recovery costs in computing payments otherwise due to the United States. 30 C.F.R. § 220.002 (1990). This allowance is designed to be taken early in the life of the lease; entitlement thereto begins at lease issuance and ends either when the lessee completes the last well on the first platform specified in the development plan, or when the account balance ceases to show a debit. See 30 C.F.R. §§ 220.002(1) and (2) (1990). Alternatively, a lessee may elect to terminate such an account by giving notice thereof to MMS. 30 C.F.R. § 220.002(3) (1990).

On appeal to this Board, Walter contends that Departmental regulations controlling termination of such accounts were unclear in 1988 and should not prevent Walter from terminating the recovery account effective in November 1988, although notice of the desire to do so was not communicated to MMS until February 1991. Walter explains that it became necessary to end the account in 1988 when an amended computation of the account, which required deduction of production proceeds from the calculation of capital costs, was required by MMS in October 1990. It was not until 1991, Walter states, after the required amendment of the account was made, that Walter decided the recovery period should have ended in 1988. Moreover, Walter contends, advice from MMS employees during this time led Walter to fail to subtract production proceeds received from November 1988 through February 1991 when reporting capital recovery costs for the lease. Walter argues it would be unjust to enforce a time limitation that should be waived in recognition of a good faith attempt to correctly report the account over the 28-month period at issue.

[1] The time limitation to which Walter refers appears at 30 C.F.R. § 220.002 (1990), which states, pertinently, that "[c]apital recovery period means the period of time that begins on the date of issuance of the [lease] and ends on the last day of the month during which * * * [t]he lessee, at his election, chooses to terminate [it]." The regulation does, as Walter states, impose a definite time limit for account closure resulting from notice given by a lessee: It is the end of the month in which a termination notice is given. In this case, notice was first given by Walter in February 1991 that termination of the recovery period was desired. Under 30 C.F.R. § 220.002, this event triggered termination of

the period at the end of February 1991, and MMS so found in the initial agency Decision on the question that issued on April 8, 1991. Nonetheless, Walter argues that the accounting regulations in effect from 1988 until 1991 failed to give sufficient notice that the capital recovery account for the lease was subject to reduction if the lease was producing.

The regulation in effect in 1990, when MMS required Walter to amend the allowance account, required that "[p]roduction revenues and other credits received" were to be deducted when calculating the allowance amount. 30 C.F.R. § 220.020(3) and (4) (1990). Identical language appears in the previous codification of the rule in the Code of Federal Regulations during 1989 and 1988. See 10 C.F.R. § 390.020(a) (1981). This aspect of the rule was not changed during the 28-month time relevant to this appeal, contrary to the suggestion by Walter that the rule was uncertain and changing during that time. Correction of the account was, therefore, required by the fact that Walter had not deducted production revenues when computing the capital recovery allowance due in accordance with 30 C.F.R. § 220.020 (1990). Whatever may have caused Walter to overlook the requirement that production revenue be deducted in calculating this account, the fact that the rule appears to have remained unchanged from November 1988 until February 1991 (and beyond) undercuts the contention that a vague regulation was later amended to permit an interpretation adverse to Walter. There is no explanation of the type of advice said to have been given by MMS employees that led Walter to omit deductions of production revenues from the allowance from 1988 until 1990. On the record before us, it does not appear that any relevant provision of the accounting rules was changed during the period at issue to the detriment of Walter, nor has the rule changed since. See 30 C.F.R. § 220.020 (1996).

Walter has not pointed to error in the MMS Decision. The MMS found, correctly, that under 30 C.F.R. § 220.002 (1990), Walter terminated the capital recovery period for lease OCS-G 4721 in February 1991 by giving notice to terminate the account during that month. Considering Walter's argument that MMS should not have applied this rule because Departmental rules governing reporting allowable costs were ambiguous, MMS correctly found that the accounting regulations at 30 C.F.R. § 222.020 (1990) provided adequate guidance to Walter for reporting the status of the capital recovery account, inasmuch as the rule stated that lease production revenue was to be deducted when calculating the allowance. Similarly vague is a suggestion that Walter was led into erroneous reporting by advice from MMS employees. The nature of the advice given, or how it may have affected the erroneous application of the accounting rule at 30 C.F.R. § 220.020 is not described; nor, on the record before us, is there any foundation for such a showing, there being no ambiguity or change shown in the capital recovery allowance regulation during the period at issue. In the absence of a showing of error in the MMS Decision under review, Walter cannot prevail on the merits of this appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Burski
Administrative Judge